

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

SHANNOPIN MINING COMPANY

Debtor

Bkcty 91- 23513 JKF

Chapter 7

ALAN E. CECH, ESQUIRE,
TRUSTEE OF THE BANKRUPTCY ESTATE
OF SHANNOPIN MINING COMPANY

Plaintiff

v.

Adv. 94- 2349 JKF

CRESCENT HILLS COAL COMPANY

Defendant

AMENDED MOTION OF SPECIAL TRUSTEE TO AUTHORIZE AND APPROVE
SETTLEMENT AND COMPROMISING OF DISPUTE WITH
INTERNAL REVENUE SERVICE AND COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF REVENUE THROUGH PAYMENT BY NON-DEBTORS OF
AGREED UPON AMOUNTS TO SAID PARTIES, TOGETHER WITH MOTION TO
APPROVE SETTLEMENT AND COMPROMISE OF DISPUTED CLAIMS BETWEEN
ESTATE AND CRESCENT HILLS COAL COMPANY, AS WELL AS DISTRIBUTION
OF PORTIONS OF THE FUNDS IN DISPUTE UNDER SAID SETTLEMENT TO
SPECIFIED PARTIES, TO THE EXTENT THAT NOTICE OF THE SAME WAS
DEFICIENT WHEN PROVIDED IN MARCH OF 1997, NUNC PRO TUNC TO APRIL
3, 1997

COMES NOW the Special Trustee above named, James R. Walsh,
Esquire, Special Trustee of The Bankruptcy Estate Of Shannopin
Mining Company, by and through his counsel, James R. Walsh,

Esquire and Spence, Custer, Saylor, Wolfe and Rose, and does file the within Amended Motion Of Special Trustee To Authorize And Approve Settlement And Compromising Of Dispute With Internal Revenue Service And Commonwealth Of Pennsylvania, Department Of Revenue Through Payment By Non-Debtors Of Agreed Upon Amounts To Said Parties, Together With Motion To Approve Settlement And Compromise Of Disputed Claims Between Estate And Crescent Hills Coal Company, As Well As Distribution Of Portions Of The Funds In Dispute Under Said Settlement To Specified Parties, To The Extent That Notice Of The Same Was Deficient When Provided In March of 1997, Nunc Pro Tunc To April 3, 1997, upon a cause whereof the following is a statement, to wit:

1. The debtor commenced the within case by filing a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. Section 101, et seq, with the United States Bankruptcy Court For The Western District Of Pennsylvania on September 30, 1991.

2. This proceeding is a "core" proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. Sections 157 and 1334.

3. The said case was converted to a case under Chapter 7 of Title 11 of the U.S. Code on August 19, 1992.

4. The United States Trustee appointed Alan E. Cech as Interim Trustee of the within case pursuant to 11 U.S.C. Section 701.

5. Alan E. Cech conducted the Section 341 meeting, and serves as Trustee of this case pursuant to Section 702(d) of the Code.

6. As the result of certain allegations made by the United States Of America, Internal Revenue Service, this Court, by its Order dated April 15, 1998, ordered the appointment of a disinterested person to serve as Special Trustee for the purpose of performing the duties set forth in said Order, the provisions thereof being incorporated herein by reference as if restated at length.

7. By notice dated April 21, 1998 the Office Of United States Trustee appointed James R. Walsh, Esquire to serve as

Special Trustee for the purpose of performing the enumerated duties.

8. The Special Trustee has been performing the investigations and reviews required to perform the enumerated duties, and in doing so, and, pursuant to this Courts Order and direction, five Interim Reports on the activities of the Special Trustee as well as the status of the matter, together with a Motion to extend the time within which the within Motion was to be filed, the provisions of said Reports and Motion being incorporated herein by reference as fully as if restated at length herein.

9. As Special Trustee, "Walsh" has, since his appointment as such, engaged in the following activities for the purpose of investigating the business and affairs of this estate, as well as the allegations made by the various parties in the F.R.C.P. Rule 60(b) Motion that is pending before the Court and the propriety of the underlying settlement, as well as to attempt to determine the distribution of estate assets that would "more probably than not" have occurred had the settlement not been made and (i) under the premise that the estate would have prevailed upon appeal, and been entitled to all of the funds at issue held by Old Republic Insurance Company (ORIC) from the premium reserve escrow accounts of "Shannopin" and "Crescent", including but not limited to the "Crescent" portion of the said funds; and (ii) under the premise that "Crescent" would prevail upon its claim(s) that its portion of the funds had not been assigned to "Shannopin" and remained its property, to the exclusion of "Shannopin".

10. In formulating the various reports and conducting the investigation, the Special Trustee engaged in the following actions:

(i) several conference calls with counsel for the Department Of Revenue, Robert Edmundson, Esquire, an attorney with whom "Walsh" has practiced with as an adversary in some cases and as an ally in other cases for over 20 years, and who, whether as an adversary or ally, "Walsh" has determined is honest, forthright, and respects, in order to obtain the case and party background, and more importantly, the "picture of the world" of "Shannopin"/"Crescent" from the Commonwealth and Attorney Edmundson's point of view;

(ii) numerous conference calls with counsel for the Internal

Revenue Service, Stuart Gibson, Esquire, in order to obtain the case and party background, and more importantly, the "picture of the world" of "Shannopin"/ "Crescent" from the "IRS" and Attorney Gibson's point of view;

(iii) several conference calls with counsel for the Internal Revenue Service, Edward Laubauch, Jr., Esquire, an attorney with whom "Walsh" has worked with for over 15 years, and that he has learned is trustworthy and forthright, in order to obtain the case and party background, and more importantly, the "picture of the world" of "Shannopin"/ "Crescent" from the "IRS" and Attorney Laubauch's point of view;

(iv) numerous conference calls and meetings with Alan Cech, as well as reviewing and inspecting such portions of his file and research as the Special Trustee requested, with Attorney Cech being the Chapter 7 Trustee and until this proceeding was commenced, counsel to the Chapter 7 Trustee, in order to obtain the case and party background, and more importantly, the "picture of the world" of "Shannopin"/ "Crescent" from the Trustees' point of view, as well as to verify positions taken and facts asserted to exist by the same;

(v) phone calls with two experienced and long standing member of the Panel Of Trustees in the Western District, Mark Glosser, Esquire and Carlotta Boehm, Esquire, for the purpose of verifying whether certain conversations asserted to have occurred by Attorney Cech in the settlement process as to practice and procedure to be followed in fact occurred, in which the Special Trustee verified that the conversations had occurred, and the advice as to practice and procedure to be followed, which differed 180 degrees between the advice as to practice and procedure to be followed given by each to Attorney Cech, and further, to ascertain, in the opinion of the Special Trustee, the merits of the competing claims between "Shannopin" and "Crescent" and his actions in settling the case as he did;

(vi) numerous conference calls and personal meetings with Attorney Lampl, counsel to "Crescent", as well as an inspection of his files which was permitted on less than 2 hours notice and without objection, in order to obtain the case and party background, and more importantly, the "picture of the world" of "Shannopin"/ "Crescent" from the "Crescent" and Attorney Lampl's point of view, as well as to verify certain facts asserted to have occurred and evaluate, in the opinion of the Special

Trustee, positions taken by Attorney Lampl and "Crescent";

(vii) numerous conference calls with Attorney David Lampl, counsel to the Official Committee Of Unsecured Creditors, to ascertain his position as to the matters at issue, case history, his view on the merits of the settlement and his rationale as to the same, and to obtain the "picture of the world" of "Shannopin"/ "Crescent" from the Committee's point of view;

(viii) numerous conference calls with Attorney Michael Yurchison, counsel to the debtor after the withdrawal of "Thorp-Reed", to obtain his position as to the merits of the settlement and his "view of the world" as to "Shannopin"/ "Crescent";

(ix) a total review of each and every document in the Bankruptcy file maintained in the Clerks office to determine whether any light could be shed on the matters under investigation from said documents;

(x) a total review of each and every document in the District Court file maintained in the Clerks office to determine whether any light could be shed on the matters under investigation from said documents;

(xi) independent research as to the matters at issue in the "Crescent"/ "Shannopin" "ownership of funds" issue, to determine, in the opinion of the Special Trustee, and his counsel, the relative prospects for prevailing by the Trustee/ Estate on the merits of the appeal that was pending at the time of the settlement before the District Court, as well as, assuming arguendo that the District Court had reversed the Order granting the estate/ Trustee summary judgment, the merits and relative prospects, in the opinion of the Special Trustee and his counsel, of the estate/ Trustee prevailing on the merits of the dispute;

(xii) a total review of each and every claim filed in this case, to determine the probable distribution that would have occurred in this case if the estate prevailed on the merits of the case, and if "Crescent" prevailed on the merits of this case, as well as to determine which claimants were accorded, under the settlement as approved and the distribution as effected, possible disparate treatment when compared to others in the same Class (i.e., Chapter 7 administrative, Chapter 11 administrative, Section 507(a)(3) priority, etc.);

(xiii) a total review of the amounts paid to the various parties that received funds under the distribution effected via the settlement at issue to determine the proper classification of said claims, the amounts actually due the claimants on the claims, and the amounts paid to the claimants upon said claims;

(xiv) a review of the settlement as proposed herein by the parties to assure that it, itself, does not appear to cause additional problems in the case and to assure that it is properly and adequately noticed; and

(xv) he has attempted to facilitate meaningful discussions between the parties to seek an amicable resolution of the matters in dispute, through providing all parties with his thoughts and perceptions based upon his investigation to date, which are those of a "neutral" third party without a "personal" interest in the outcome, to attempt to "broker" a settlement to avoid what, if required to be litigated and given the various issues raised by the respective parties, would be protracted, expensive, time consuming, and would inevitably, in the opinion of the Special Trustee, end up with substantial and perhaps career ending damage to the reputation of the party not prevailing.

11. The essential "background" of the matters in dispute is, in the opinion of "Walsh", summarized in the following factual summary, which was determined from the Trustee's lengthily investigation, to wit:

(i) "Crescent" and "Shannopin" were at all times corporations engaged, during relevant time periods, in the mining and removal of coal;

(ii) from 1983 through, in relevant part, 1986, "Crescent" was a controlled affiliate of "Shannopin" through "Shannopins'" ownership of 86% of the stock of "Crescent";

(iii) "Crescent" and "Shannopin" had each, to insure their potential liabilities under workmen's compensation law for traumatic injuries as well as under the Federal Black Lung law, obtained insurance coverage through policies issued by "ORIC";

(iv) the insurance program/ contract entered into between "ORIC" and "Shannopin", and "ORIC" and "Crescent" was not a "standard" policy whereby in return for the payment of specified premiums, the insurance company "assumes" the insured risks, rather, it was

a "loss sensitive" policy whereby "standard" premiums are periodically paid, and said funds are placed into escrow, with the said "fund" assessed a "service fee" as well as actual claim payments and administrative costs. To the extent that loss experience resulted in "charges" against the "fund" exceeding the amount paid into the "fund", a retroactive charge would be made, and to the extent that "charges" against the "fund" were less than the amount paid in, the excess amount, as determined by "ORIC", would be, as the case may be, used as "Credits" toward future premium charges or refunded to the payor;

(v) in June of 1986, the actuarial projections available indicated to "Shannopin" and "Crescent" that "Crescent" had an account balance with "ORIC" of \$2,815,000.00 +/-, against a projected claim liability of \$3,331,000 +/-, which indicated a "negative" balance showing a liability of over \$500,000;

(vi) in June of 1986, "Shannopin" entered into an agreement with Atlas Alloys Company, Inc. ("Atlas") for the sale to "Atlas" of the "Crescent" stock owned by "Shannopin";

(vii) a condition of said sale was that certain inter-company obligations be "removed/ adjusted", and said condition was addressed via "Shannopin" agreeing to assume the Black Lung liabilities of "Crescent" that were then perceived to exceed \$500,000, and "Crescent" transferring certain assets to "Shannopin" to compensate it for assuming the liability at issue, and further, "Crescent" assigning to "Shannopin" its interest in the "Crescent" Black Lung Fund with "ORIC", which, as set forth, was perceived to have a negative net-worth of \$500,000, +/-;

(viii) the "Crescent"/ "Shannopin" transfers were effected, and the "Shannopin"/ "Atlas" transfer was effected;

(ix) based upon the documentation executed in June of 1986, from June of 1986 forward, although "ORIC" continued to maintain separate and distinct "fund" accounts for "Shannopin" and "Crescent", "Shannopin" controlled and was the entity provided with status reports as to both accounts;

(x) the actions of "ORIC" were neither questioned nor challenged by "Crescent", which was proceeding on the assumption and belief, as set forth supra, that the "Crescent" "fund", which had been assigned to "Shannopin", had no value and had a negative value of over \$500,000;

(xi) as "fate" would have it, contrary to the belief and assumptions of the parties, the actual "claim experience" of the "Shannopin" and "Crescent" "funds" was substantially more favorable than anticipated and projected, and rather than a "negative" value of over \$500,000, as had been the belief of the parties at the time of the 1986 transfers and assignment, the "Crescent" fund in fact had substantial value, which, as discussed infra, resulted in substantial refunds and credit payments by "ORIC" to "Shannopin" (or its account as credits toward ongoing premium accruals), on a pre-petition basis, which amounts, as identified by "ORIC", were as follows, to wit:

(A) in December of 1986, \$450,052 of a refund due to "Shannopin" from the "Shannopin" "fund" was applied to the premium obligations of "Crescent", resulting in "Shannopin", at that time, having received \$450,052 less of its funds than it would otherwise have received;

(B) in November of 1987, \$947,398 of a refund due on the "Crescent" "fund" was applied to the premium obligations of "Shannopin", resulting in "Shannopin", at that time, having "recouped" its \$450,052 December 1986 payment on behalf of "Crescent" liability, and receiving a positive benefit to that date of \$497,346; and

(C) in November of 1990, \$375,269 of a refund due on the "Crescent" "fund" was applied to the premium obligations of "Shannopin",

resulting in "Shannopin", at that time, having received a positive pre-petition benefit to that date of \$872,615.

(xii) this benefit to "Shannopin" continued on a "post-petition" basis, with both "ORIC" and "Shannopin" acting in the belief and under the assumption that the 1986 assignment by "Crescent" of its interest in the "Crescent" "funds" meant what it said, that it, that "Shannopin" was effectively the owner of said "funds", and the following post-petition distribution from said "Crescent" "fund" account were made to "Shannopin", to wit:

(A) in November of 1992, "Shannopin" received a refund of \$224,000 of "funds" from the "Crescent" fund;

(B) in August of 1993, "Shannopin" received a distribution of

\$451,873, which amounts were from the "Crescent" funds, resulting in the post-petition distribution to "Shannopin" from the "Crescent" "funds" totaling as of the date \$675,873; and

(C) in November of 1994, "Shannopin" received a distribution of \$52,866.00 which amounts were from the "Crescent" funds, for use in satisfying the claims of Mellon Bank, N.A. against the estate that were secured by the "Shannopin" interest in said "funds", resulting in the post-petition distributions to "Shannopin" from the "Crescent" "funds" totaling as of said date \$728,739;

(xiii) as of November of 1994, the distributions to "Shannopin" from the "Crescent" "funds" totaled \$872,615.00 in pre-petition distributions and \$728,739.00 in post-petition distributions, for a total amount of distribution to "Shannopin" from the "Crescent" funds of \$1,601,354;

(xiv) in late 1993, at the time of the proposed distribution for the payment of the secured "Mellon Bank" claim, "Crescent", for the first time since 1986 and the "86 Agreement", appeared through counsel in this case, and asserted that the "1986 Agreement" had, inter alia, not intended to nor did it have the affect of transferring "positive" benefits to "Shannopin" as to the "Crescent" "fund", and that the parties, to the extent that said occurred, had structured the "86 deal" premised upon mutual mistake, i.e., that assets were transferred to "Shannopin" under the premise that there would be a \$500,000 +/- liability assumed by it, not that there would be a positive result of over \$1,601,354.00, with the potential for an additional \$551,000 +/-;

(xv) "Crescent", at that time, asserted that as it had not, despite the 1986 agreement, transferred the "positive" \$2,152,000 entitlement to refund to "Shannopin", that "Crescent" had claims against "ORIC" and/or "Shannopin" for the amount paid/ credited for the benefit of "Shannopin" to that date, and that it was entitled to the balance remaining in the account, to the extent that it was there and would become entitled to release;

(xvi) "Crescent" and "Shannopin" entered into negotiations to resolve their conflicting claims of ownership of the funds, both those previously distributed/ credited and those remaining;

(xvii) "ORIC" advised all parties that to the extent that it would be determined that funds previously credited/ distributed to or for the benefit of "Shannopin" had in fact been the

property of "Crescent" and that it was liable therefore, that it would assert its right to recoupment/ setoff against the remaining funds of "Shannopin" that would become due to "Shannopin" in the future, subject, of course, to obtaining Bankruptcy Court approval to so do, which it (and the Special Trustee, to the extent relevant) believes, under the circumstances, would have been granted if "Crescent" prevailed;

(xviii) "Shannopin" and "Crescent" reached a settlement of their dispute, which, as "Shannopin" was a debtor, required the prior approval, after notice and hearing, of the Bankruptcy Court, and said approval was sought;

(xix) the Bankruptcy Court, after hearing and argument, in which objections to the settlement as proposed were filed by various parties ("LTV", "UMWA", counsel to the Official Committee Of Unsecured Creditors, Sable, Makoroff & Gusky, and 1992 Health & Welfare Fund, and the Combined Funds) determined, inter alia, that there was no "case in controversy" pending before it, and that, without expressing an opinion as to the merits (or lack thereof) of the proposed settlement, that it would not rule upon the same unless an adversary proceeding was pending, setting forth the facts;

(xx) upon receiving the Courts' determination, the Trustee commenced the adversary proceeding docketed to the above term and number to obtain an adjudication as to the competing claims of "Shannopin" and "Crescent" to the funds in dispute, in which the Trustee asserted ownership of the "funds" via the 1986 assignment;

(xxi) upon the adversary proceeding being filed and the Court reviewing the pleading as filed by the Trustee, the Bankruptcy Court reconvened the hearing on the pending settlement, and after considering the same, as well as the facts pled in the complaint, determined the proposed settlement was not in the best interest of the estate, and denied the same;

(xxii) "Crescent" then filed its answer and counterclaim, asserting ownership of the funds at issue and that "Shannopin" had, inter alia, converted its assets pre and post petition;

(xxiii) at this point, "Crescent" sought to withdraw the reference in this case, and said request was denied by the District Court;

(xxiv) upon the request for withdrawal being denied, the Trustee sought and was accorded Summary Judgment by the Bankruptcy Court, determining that the 1986 Agreement had the effect of transferring all rights to the "Crescent" funds to "Shannopin";

(xxv) "Crescent" filed a timely appeal to the District Court of the Order granting the Trustees' Motion For Summary Judgment;

(xxvi) counsel to the "Trustee" and "Crescent" determined that the Bankruptcy Judge presiding in the case had, for reason they espouse in their "Statements", an animus to counsel to "Crescent", and further, counsel to "Shannopin" determined, after reviewing the facts as presented at the Summary Judgment hearing, that it was likely that he/ the estate would not prevail in the pending appeal, and that the granting of Summary Judgment would likely be reversed;

(xxvii) after review of the pleadings, as well as an independent review of the law as then applicable (and now applicable), the Special Trustee (while disagreeing with the conclusions as to bias and personal animus on the part of the Court toward counsel for "Crescent"), does agree that it appears there was a substantial probability that the District Court (or, given the amounts at issue, the Court Of Appeals) would have determined that there were issues of material fact, and that the matter would be reversed and remanded for trial;

(xxviii) on February 19, 1997, after the appeal had been filed to the District Court, the Trustee filed a Motion with the District Court seeking to have the District Court withdraw the entire case from the Bankruptcy Court and assume jurisdiction (?) over the same before the District Court;

(xxix) upon the District Court granting the Motion To Withdraw the case and have it assume jurisdiction over the case, the Trustee and "Crescent" filed a Motion with the District Court to have the District Court approve the settlement between "Crescent" and "Shannopin", which settlement provided for the entire "Fund" of "Crescent" and "Shannopin" to be determined to be the property of "Crescent", and further provided for \$2,100,000 in specified claims against the estate to be paid by "Crescent";

(xxx) the claims to be paid under the settlement as proposed, were, inter alia, the claims of the Trustee/ his counsel, debtors

counsel, and certain of the parties who objected to the original settlement before the Bankruptcy Court, to wit, the UMWA (for its employees wages and benefits), the 1992 Fund, the Combined Fund, and counsel to the Official Committee Of Unsecured Creditors;

(xxxii) a notice of settlement was forwarded to the parties set forth on the "Service List", however, while giving general notice that the dispute was being settled, it did not, in the opinion of the Special Trustee, afford the parties meaningful notice that the settlement was also determining which parties claims would be paid and which parties claims would, in reality by not being scheduled to be paid, not be paid;

(xxxiii) one "group" of parties objected to the settlement, a group consisting of non-union salaried employees, who engaged Buchanan- Ingersoll as counsel, and the settlement was modified to accord that group a payment of \$70,000, which it agreed to accept as payment in full of their claims which were Chapter 11 administrative claims totaling over \$140,000;

(xxxiiii) the District Court approved the settlement as proposed, and in addition, the funds affected by the settlement were surrendered to the Trustee, who effected the agreed upon distribution of funds;

(xxxv) the Special Trustee's investigation has led him to conclude that the effect of the settlement, which recognized that all of the "funds", both the "Shannopin" and "Crescent" funds, were property of "Crescent" rather than "Shannopin" led to "Crescent" effectively receiving a distribution of \$4,297,317 of "Shannopin" "funds", of which \$2,080,000 (plus the income tax consequences resulting from its receipt of the same which the Special Trustees accountant, as a "freebee" favor "quickie" estimate would be approximately \$1,290,000) was used to pay "estate" claims, thereby, after considering the projected tax consequences to "Crescent", having "Crescent" incur liabilities of \$3,370,000, and receive a "net benefit" as of that date of \$927,317.00;

(xxxvi) subsequent to the settlement being effected, "LTV", which was not provided for under the settlement and which had been accorded a super priority secured claim against the "Shannopin" "fund", contacted counsel for "Crescent", and "Crescent" "purchased" said claim from "LTV" at 100 cents on the dollar, without reduction, which was \$100,000, thereby further reducing

the "net benefit" to "Crescent". Said transfer was memorialized via a Transfer of Claim Agreement dated April 17, 1998, and a Notice Of Transferred Claim, both of which were filed with the Clerk's Office on or about August 31, 2000, at Documents 694 and 695;

(xxxvi) although professionals received compensation for their services in this case without filing fee applications, the Special Trustee has reviewed the time sheets and records of each such recipient, and the records reviewed established that each such recipient, Sable Makoroff & Gusky, P.C., Michael Yurchison, Esquire, and Alan Cech, Esquire received less than the amounts for which their time sheets and records establish that their claims would more probably than not have been allowed;

(xxxvii) although not known to the Trustee at the time of the entry into the settlement, the Special Trustee has been advised by "ORIC" that further adjustment to the "funds" has occurred as the result of actual claims experience, and that \$1,249,851.12 remains in the "Shannopin" "fund", of which some portion will more probably than not be available for refund to "Crescent", although the exact amount and time of payment is not known nor set forth in the "ORIC" reports, and said status was further affected by "ORIC's" most recent actuarial analysis as the result of pending changes to the Black Lung regulations, which resulted in the determination that the fund will be at in a deficit balance rather than a surplus balance if the pending regulations are enacted and upheld;

(xxxviii) the investigation by the Special Trustee, coupled with the corroboration of the inquiries made by the Trustee of other panel trustees as to the practice and procedure to be followed when settling a matter that is on appeal, lead the Special Trustee to conclude that there in no merit to the averments made in various pleadings that the procedure followed was a "scheme" to defraud the District Court, and that while then notice was deficient to disclose the intent to distribute funds as well as settle the merits, there was not any evidence that it was intentionally deficient to mislead or defraud any party; and

(xxxxix) after extensive discovery and negotiations, the parties have agreed to settle and compromise their differences through the payment to IRS by non-estate funds provided by "Crescent", Committee Counsel, the Trustee and debtors counsel, of \$100,000 and to the Commonwealth, Department Of Revenue of the sum of

\$20,000 out of the same source of funds, as outlined in Ex. "A" hereof, in return for which the pending 60(b) Motions will be withdrawn, and releases as outline in the Ex. "A" executed, all subject to the prior approval and authorization of this Court and the District Court for said settlement(s).

12. Had the Trustee not settled the case and had he prevailed on the merits, it is projected that he would have received \$4,748,642.00, (plus a potential for receiving some portion of the \$1,355,000 +/- remaining on deposit with "ORIC" at an unknown future date), and, using the best available "guesstimate" of the Special Trustee as well as the distribution priorities required under Chapter 7 of the Code, as well as assuming that said litigation would have proceeded through the District Court and the Court Of Appeals, (without factoring in any time that would pass in an attempt to obtain cert.), it is projected that the appeal process and trial process would not have been exhausted and distribution occur until at the earliest, December of 1999.

13. If the estate failed to prevail as to the "Crescent" "funds", the Trustee would have received \$4,297,317, plus a potential for receipt of additional funds from the \$1,249,851 escrowed for ongoing obligations of "Shannopin", possibly subject to a right of recoupment/ setoff in favor of "ORIC" in the amount of between \$730,000 (the post-petition "Crescent" "funds" advances to "Shannopin"), and \$1,600,000 (the total pre and post petition advances of "Crescent" "funds" to "Shannopin"), resulting in the actual amount being received being between \$3,570,000, +/-, and \$2,600,000 +/-.

14. The projected distribution, in December of 1999, would have been, in the opinion of the Special Trustee, as follows, to wit:

(i) Chapter 7 administrative claims:

(A) Alan E. Cech- "Cech" was the Trustee in Chapter 7 as well as counsel to the Trustee. By the Special Trustees' calculations, out of the settlement proceeds of \$4,748,642.00 that he would have received and deposited into his escrow account, his commissions, at the statutory rate, if allowed, would have totaled, by his calculations, \$142,459.00.

The Court had authorized counsel to the Trustee to be

retained at the contingent fee rate of 40% of the recovery, if the matter was required to go to trial. Assuming that the estate prevailed and was found entitled to the entire \$4,748,642.00 administered by him to date from said fund under the settlement, his contingent fee could have exceeded \$1,582,722.00.

(B) Claim 426, asserted on behalf of the U.S. Trustee for Chapter 11 administrative fees, which claim is asserted to be entitled to allowance as a Chapter 7 administrative claim, in the amount of \$8,750.00, it being noted that said claim was not paid to date;

(C) UMWA 1992 Combined Benefit Plan- as of September 30, 1998, the amounts due the "Combined Plan", which are asserted to be allowable as Chapter 7 administrative claims, and are supported to be allowed as such by several appellate decisions by Courts of Appeal (it being noted that the Third Circuit has not decided the issue as of yet, and that Judge Bentz issued a decision that found to the contrary) totaled \$3,913,318.95, and that said claim increased at the projected rate of \$54,299.44 per month until the estate closes (without factoring in the amounts accruing after September 30, 1998);

(D) UMWA 1992 Combined Benefit Plan- in addition to the aforesaid amounts, the Plan has premiums due claims which qualify as Chapter 7 claims of over \$293,000 as of September 20, 1998;

(E) UMWA Combined Benefit Fund- The "Combined Fund", which is a different claim and entity than the claims set forth supra, asserted claims as follows, to wit, (a) Chapter 7 administrative claim of \$45,000.00, +/-; (b) Chapter 11 administrative super-priority expense claim in the amount of 8.7 million dollars, and (c) a Chapter 11 administrative expense claim in the amount of 7 million dollars. The amounts received were paid pursuant to a settlement of an adversary proceeding at Adv. 91- 0630, approved by Judge Fitzgerald on September 30, 1993, under which a super-priority lien was accorded the claimant against the Shannopin Black Lung Fund. It is the opinion of the Special Trustee that the amounts at issue themselves could have resulted in litigation between the various "UMWA" funds as to whether the Chapter 11 super-priority claims were entitled to payment prior to the Chapter 7 claims; (F) LTV- the super-priority secured claim accorded to the claimant by the Court as a Chapter 11 super-priority secured claim, in the amount of \$100,000;

(G) U.S. Trustee- claim for Chapter 11 administrative fees which

is allowed as a Chapter 7 Administrative Expense in the amount of \$8,750.00;

(H) Frank E. Sparr & Co.- claim for professional fees of accountant to Chapter 7 Trustee for preparation of estate tax returns, in the amount of \$12,720.00; and

(I) Clerk, U.S Bankruptcy Court- claim for notice fees, claim charges, adversary fees filed, and copy charges, in the amount of \$4,628.25.

15. From review of the above, it is the Special Trustees' opinion and conclusion that the estate would have been, and was, but for the settlement, Chapter 7 administratively insolvent, and that the Chapter 7 administrative claimants would have received, possibly nothing (after allowance of the claims of "LTV" and the super-priority claims of the "Fund", if determined to be entitled to payment prior to distribution to the Chapter 7 claimants), and at best a pro-rata distribution.

16. The settlement effected and at issue resulted in the following claimants being paid the following amounts, to wit:

(i) Buchanan Ingersoll, P.C.- "Buchanan Ingersoll" received the sum of \$70,000.00 under the settlement. This amount was received under revisions to the settlement as originally proposed, as the result of objections to the settlement filed by "Buchanan Ingersoll" on behalf of 13 individuals it represented who were salaried employees, having claims, per the Trustees' analysis of the claims ledger, asserting entitlement to allowance as Chapter 11 administrative claims, totaling \$144,312.01;

(ii) Healey, Davidson & Hornack- "Healey" received the sum of \$740,000 under the settlement agreement. This amount was received on behalf of 257 separate claimants asserting claims averring entitlement to allowance as Chapter 11 administrative claims, on behalf of members of the bargaining unit, for health care benefits for retirees that accrued post-petition, as well as, as to employees actively employed post-petition, post-petition wages that were unpaid, post-petition accrued vacation benefits, and 35% of the post-petition accrued but unpaid health care benefits;

(iii) UMWA 1992 Benefit Plan- The UMWA 1992 Benefit Plan received, under the settlement, \$700,000.00. This amount was the amount agreed to be accepted as payment for its claim, asserted

to be entitled to allowance as a Chapter 7 administrative claim (which increased at a rate of in excess of \$54,000 +/- per month). The claimant has asserted that the amounts owed as Chapter 7 administrative claims as of the date of the settlement exceeded \$3,750,420.63 for claims to the 1992 Plan, and it would have been owed, as Chapter 7 administrative claims for annual prefunding premiums, in excess of \$263,900. This claim, as of September 30, 1998, exceeded \$3,913,318.95, and was projected to increase, unless the Supreme Court reversed the existing status quo, at the rate of \$53,300.00 +/- per month until the estate was closed;

(iv) UMWA Combined Benefit Fund- The UMWA Combined Benefit Fund received, under the settlement, \$120,000.00. This amount was the amount agreed to be accepted as payment of its claim(s), which were asserted to be as follows, to wit, (a) Chapter 7 administrative claim of \$45,000.00, +/-; (b) Chapter 11 administrative super-priority expense claim in the amount of 8.7 million dollars, and (c) a Chapter 11 administrative expense claim in the amount of 7 million dollars. The amounts received were paid pursuant to a settlement of an adversary proceeding at Adv. 91- 0630, approved by Judge Fitzgerald on September 30, 1993, under which a super-priority lien was accorded the claimant against the Shannopin Black Lung Fund;

(v) Michael J Yurchison- "Yurchison" was counsel to the debtor after original counsel, Thorp, Reed and Armstrong, was unable to serve as the result of its being the holder of a pre-petition claim. "Yurchison" received, under the settlement, \$100,000.00. His review of his time records indicates that between December 3, 1991 and March 31, 1992, the period set forth in an Interim Fee Application, the sum of \$42,561.90 in fees and expenses were incurred. Attorney Yurchison, between March 31, 1992 and May 11, 1994, indicates his time records indicate an additional amount of fees incurred of \$17,463.97. Subsequent to May 11, 1994, Attorney Yurchison indicates that his time sheets indicate additional time expended in the amount of \$42,435.00, for a total of \$102,460.87, without including 2 to 3 weeks of time in July/ August of 1992, for which he cannot locate his time records;

(vi) Alan E. Cech- "Cech" was the Trustee in Chapter 7 as well as counsel to the Trustee. By the Special Trustees' calculations, out of the settlement proceeds of \$4,748,642.00 that he received and deposited into his escrow account, he appears to have retained, under the settlement, \$240,000.00. The Trustee has

indicated that after his Second Application For Trustees' Commission, he administered \$1,600,000 of Black Lung Distributions, which was paid to Mellon Bank as the holder of an allowed secured claim. His commission on that amount, by his calculations, would have totaled \$48,000, if allowed for the full amount of applicable commissions.

The Trustee further indicates that had he prevailed upon the litigation with Crescent and become entitled to the entire \$4,748,642.00, his commissions, at the maximum statutory rate, if allowed, would have totaled, by his calculations, \$142,459.00, thereby resulting in aggregate commissions of \$190,459.00, if allowed for the total amount claimed.

The Court had authorized counsel to the Trustee to be retained at the contingent fee rate of 40% of the recovery, if the matter was required to go to trial. Assuming that the estate prevailed and was found entitled to the entire \$4,748,642.00 administered by him to date from said fund under the settlement, his contingent fee could have exceeded \$1,582,722.00; and

(vii) Sable, Makoroff & Gusky, P.C.- this firm acted as counsel to the Official Committee Of Unsecured Creditors. Attorney David Lampl has advised the Special Trustee that its time sheets and records disclose charges of in excess of \$125,000. It, under the settlement, received \$110,000.00. Of that amount, it is the conclusion of the Special Trustee that said firm received \$100,000 towards its fees and expenses, and that it paid \$10,000 to Coopers & Lybrand, P.C., accountants to the Committee, which "Sable- Makoroff" indicates was agreed to be accepted as payment in full of its Chapter 11 claim as a professional; and

(viii) "LTV"- this claim was a claim allowed by the Court as a Chapter 11 super-priority secured claim, the security for which was the "Shannopin" interest in the "ORIC" obligation, and which the Court determined was entitled to allowance as such, which amount was paid by "Crescent" after the settlement, purchasing the claim for \$100,000 as the result of the assertion of the secured claim by its counsel, Eric Schaeffer, Esq., resulting in "Crescent" holding said claim at this time;

17. As set forth above, the conclusion of the Special Trustee is that even if the Trustee had litigated the matters at issue with "Crescent" and prevailed, that funds would not have been available for payment of Chapter 11 administrative claims,

and that to the extent that such claims were paid under the settlement, said amounts were paid solely as the result of voluntary reductions in the amounts to be paid to the Trustee, his counsel, the 1992 Combined Funds, and the Combined Funds, all of which funds would, under the required Chapter 7 distribution provisions, would have resulted in the employees, both union and non-union that received funds, not receiving any amounts.

18. Although not effected under the process and procedure that would have been utilized by the Special Trustee, and although the settlement resulted in the payment of certain claims that would not have been paid under the analysis of the Special Trustee, it is the conclusion of the Special Trustee that no party received funds under the settlement that would have been received by another Chapter 11 priority claimant had a distribution under Section 725 of the Code been effected and had the Trustee prevailed in the litigation at issue.

19. The Special Trustee believes and therefore avers that the settlement as proposed between the non-debtor parties in interest and the "IRS" and "Revenue" is in the best interest of the estate and the creditors of this estate likely to benefit from the estate prevailing.

20. Given the fact that the claimants holding claims allowable as Chapter 11 administrative claim that were paid under the settlement at issue as well as the claimants holding claims allowable as Chapter 11 administrative claims that were not paid, would not have, under the likely distribution even if the Trustee had prevailed, the Special Trustee cannot represent to the Court that any party was adversely affected by the settlement and distribution, other than parties that actively and affirmatively participated in and agreed to the terms thereof, and in fact the amounts paid to the Chapter 11 administrative claimants, including but not limited to the Chapter 11 claims of the employees, union as well as non-union, the 1992 and Combined Funds, and the claims of counsel to the debtor and the committee would not, in the opinion of the Special Trustee, have been paid to said claimant and would have been paid to parties that voluntarily reduced their claims to effect said payments.

21. The Special Trustees' examination has disclosed the existence of two "classes" of potential claimants that hold claims that will not be addressed in the analysis set forth below, and that could have been classified as Chapter 11

administrative claims had funds been available to pay the same, but which had the "defects" set forth below, and therefore are believed not to have been entitled to allowance as Chapter 11 administrative claims, to wit:

(i) 332 claims, totaling \$419,990.93 (without reviewing the claims for duplication), filed on behalf of Health Care Providers. These claims, upon examination of the same by the Special Trustee, indicate that the services were rendered by the "Providers" subsequent to the commencement of this case. The claims filed, however, did not assert entitlement to allowance as Administrative Claims, rather, the same asserted entitlement to allowance as either a general unsecured claim not entitled to priority or a general unsecured claim entitled to priority pursuant to Section 507(a)(4). The claims are not addressed as Chapter 11 administrative claims as the claimants did not timely assert entitlement to allowance of the claims as Chapter 11 administrative claims, and further, many of the claims were also included in the claims asserted by the employees and that were addressed in the amounts paid under the settlements to the UMWA on behalf of the Bargaining Unit employees, and Buchanan Ingersoll on behalf of salaried employees represented by it; and

(ii) 11 claims, totaling \$107,731.52 (without reviewing the claims for duplication), filed on behalf of Trade Creditors. These claims, upon examination of the same by the Special Trustee, indicate that the services were rendered by the "Suppliers" subsequent to the commencement of this case. The claims filed, however, did not assert entitlement to allowance as Administrative Claims, rather, the same asserted entitlement to allowance as general unsecured claims not entitled to priority.

22. The examination of the record by the Special Trustee indicates that the following claims, asserting entitlement to allowance as administrative claims, were timely filed, (excluding the claims addressed under the settlement as well as the claims of "IRS" and "Revenue"), and could have been entitled to payment as Chapter 7 administrative claims, and, in the event that pro-rata distribution was somehow effected to Chapter 11 administrative claimants (which, as set forth above, is projected not to have occurred even under the most optimistic set of circumstances), to pro-rata distributions as such, to wit:

(i) Claim 426, asserted on behalf of the U.S. Trustee for Chapter 11 administrative fees, which claim is asserted to be entitled to

allowance as a Chapter 7 administrative claim, in the amount of \$8,750.00;

(ii) Claim 427, asserted on behalf of the Department of Labor & Industry, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim, for 92-1 in the amount of \$38,929.81, and 92-2, in the amount of \$5,944.01, for a total claim of \$44,673.82;

(iii) Claim 518, asserted on behalf of Coopers-Lybrand, accountant for the Chapter 11 debtor, asserting a claim entitled to allowance as a Chapter 11 administrative claim in the amount of \$57,627.00. Although this claim remains of records, the Special Trustee is aware that "Coopers" merged with "Price-Waterhouse", and as such, he contacted that Lawrence Ranallo, C.P.A., who advised that the records do not reflect an existing claim for these amounts. The Special Trustee has been advised that the claimant was apprised of the facts of this case, and of the fact that "Coopers" received the sum of \$10,000 from "Sable-Makoroff" from funds received by said firm as payment of its claims. "Price Waterhouse-Coopers" appeared in this proceeding via counsel and is not opposing the pending settlement(s) and is not seeking additional payments from the estate;

(iv) Claim 706, asserted on behalf of Thorp, Reed & Armstrong, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim, for services rendered as initial applicant as counsel to the debtor, for unpaid fees of \$39,140.04. The Special Trustee notes that this claim would be objected to if asserted at this time. The records voluntarily produced by the claimant indicate that after the decision to file the case had been made, the debtor paid to the claimant, which had also been its pre-petition general counsel, \$50,000.00 as a retainer. The claimant applied \$30,073.27 to outstanding invoices for services on then "current invoices". The Special Trustee believes that the defense of "ordinary course" payment of "Current invoices" would not be sustained, as the decision to file had been made and the payment of a lump sum of \$50,000 to counsel on the "eve" of the case would not be held "ordinary course";

(v) Claim 713, of Price Waterhouse, which had been accountant for the Official Committee Of Unsecured Creditors, asserts a claim seeking allowance as a Chapter 11 administrative claim in the amount of \$85,140.00 (this claim is represented by Tucker

Arensberg, P.C. in this case). "Price Waterhouse-Coopers" appeared in this proceeding via counsel and is not opposing the pending settlement(s) and is not seeking additional payments from the estate;

(vi) Claim 879, by William Byrne, asserting a claim for wages due for the post-petition period of \$2,160.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(vii) Claim 889, by Stephen N. Carson, asserting a claim for wages due for the post-petition period of \$8,068.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(viii) Claim 895, by Richard Gashie, asserting a claim for wages due for the post-petition period of \$3,276.75, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(ix) Claim 899, by Richard D. Marcavitch, asserting a claim for wages due for the post-petition period of \$3,746.45, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(x) Claim 919, by Robert G. Pilon, Sr., asserting a claim for wages due for the post-petition period of \$5,812.28, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim, as amended by claim 1099, asserting a priority claim of \$7,482.88;

(xi) Claim 928, by Joseph J. Walko, asserting a claim for wages due for the post-petition period of \$7,341.89, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xii) Claim 929, by William J. Chabanik, asserting a claim for wages due for the post-petition period of \$8,136.20, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xiii) Claim 931, by Donald Lowry, asserting a claim for wages due for the post-petition period of \$1,899.96, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xiv) Claim 942, by Barry McDermott, asserting a claim for wages due for the post-petition period of \$3,950.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xv) Claim 943, by Michael C. Duranko, asserting a claim for wages due for the post-petition period of \$3,690.67, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xvi) Claim 950, by George Linoski, asserting a claim for wages due for the post-petition period of \$7,599.25, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xvii) Claim 1038, by Gary Sebold, asserting a claim for wages due for the post-petition period of \$2,698.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xviii) Claim 1100, by Ed Smith, asserting a claim for wages due for the post-petition period of \$0.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xix) Claim 1109, by Benjamin Kelly, asserting a claim for wages due for the post-petition period of \$1,318.93, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xx) Claim 1114, by Mark W. Long, asserting a claim for wages due for the post-petition period of \$1,200.78, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xxi) Claim 1124, by Betty Sue Pekar, asserting a claim for wages due for the post-petition period of \$3,893.34, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xxii) Claim 1125, by Andrew F. Pekar, Jr., asserting a claim for wages due for the post-petition period of \$425.06, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xxiii) Claim 1134, by Richard M. Esposito, asserting a claim for wages due for the post-petition period of \$9,652.50, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xxiv) Claim 1182, by Richard Pekar, asserting a claim for wages due for the post-petition period of \$8,861.04, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xxv) Claim 1188, by U.S. Dept. Of Interior, asserting a claim for charges due for the post-petition period of \$192.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xxvi) Claim 1214, by Commonwealth Of Pa., Dept. Of Environmental Protection, asserting a claim for amounts assessed for the post-petition period of \$94,690.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim;

(xxvii) Claim 1218, by Frank Klink, asserting a claim for wages due for the post-petition period of \$12,292.68, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim; and

(xxviii) Claim 1271, by Jack Arndt, Jr., asserting a claim for wages due for the post-petition period of \$2,276.00, which claim is asserted to be entitled to allowance as a Chapter 11 administrative claim.

23. In addition to the above, the Special Trustee is aware of the following unpaid Chapter 7 administrative claims that remain unpaid, to wit:

(i) the claim(s) of the Special Trustee and counsel to the Special Trustee for services rendered in this proceeding since his appointment for the services rendered as Special Trustee and counsel thereto, which continue to accrue, which presently, including fees and expenses, exceed \$39,100;

(ii) the claim(s) of Frank E. Sparr & Co., which was retained as accountant to the Chapter 7 Trustee for services rendered re tax liability of estate, preparation of tax returns, and related matters, for which the accountant claims \$12,720.00 for professional services rendered; and

(iii) the claim of the Clerk U.S. Bankruptcy Court for notice fees, claim charges, adversary fees filed, and copy charges, for which the Clerk has submitted a statement in the amount of \$4,628.25.

24. Although not necessarily reached invoking the notice and process and procedures normally utilized in Chapter 7 cases, the Special Trustee is of the opinion and conclusion that a better distribution to creditors would not have resulted had notice and distribution been effected in the manner that would have been utilized by the Special Trustee.

25. After considering the analysis of the merits of the underlying dispute as analyzed by the Special Trustee utilizing the claims analysis set forth above (which does not factor in any tax consequences as the result of consultation with the accountant often used by the Special Trustee in a "freebie/quickie" review), the cost of said litigation, the benefits to the estate and its creditors of said litigation, the complexity of said litigation; the effect upon the estate of an adverse decision; the delays in the administration of the estate likely to result from continued litigation, and all other factors, the Special Trustee is of the opinion that the settlements reached as to the matters in dispute between "Crescent" and the estate as well as the estate, the Trustee and non-debtor parties, to the extent, if any, that defective notice precludes the April 1997 Order approving said settlement from being effective, as well as the settlement reached between the IRS, Revenue and the said parties and the estate was fair and reasonable under the circumstances, in the best interest of the estate and its creditors, particularly those who would be most adversely affected by any such settlement, and did not result in any party that would have received payment had the Trustee litigated and prevailed not receiving payment.

26. The Special Trustee believes and therefore avers that all parties that would have and could have benefited from continued litigation of the matters in dispute would be benefited from the settlement as proposed in March of 1997 as well as the modifications thereto effected by the settlement to be effected hereby as to the claims of IRS and Revenue.

27. No party has promised the Special Trustee or his counsel any consideration or payment of any kind other than as the Court

may allow after notice and hearing on their fee application to be fully filed.

28. The Special Trustee has been advised that his position and conclusions set forth herein will be responded to and supplemented by position statements and summary briefs to be filed by counsel to the Trustee/ the Trustee and counsel to "Crescent".

29. The Special Trustee believes that the Court should, after notice and hearing, authorize, approve and confirm the settlement of the matters in dispute between "Crescent" and the estate, as well as the non-debtors, as provided for in the settlement order presented to the District Court in April 13, 1997, to the extent that the entry of said order approving the same was defective for lack of notice to parties in interest, nunc pro tunc to the date of the entry of said Order.

30. The Special Trustee believes that the Court should, after notice and hearing, authorize, approve and confirm the settlement of the matters in dispute between "Crescent" and the estate, as well as the non-debtors, and the IRS and Revenue as provided for herein.

31. Given the large number of individuals that received funds pursuant to the Order entered in April of 1997 and the fact that the majority of the same have more probably than not expended said funds, the Special Trustee is of the opinion that "unwinding" said distribution is not feasible, and would itself result in substantial expenditures of funds both all parties with no parties other than those that have already agreed, under the settlement, to reduce or accept less than the amount that they would have been entitled to receive benefiting therefrom.

32. The Chapter 7 Trustee has advised the Special Trustee and the Court that he continues to possess, in the Estate Account, over \$75,000, with interest continuing to accrue thereon.

33. Should the pending settlement be approved, the parties entitled to receive a distribution from said funds are and will be the holders of allowed Chapter 7 administrative claims, which are as follows, to wit:

(i) James R. Walsh, Esquire, counsel to the Special Trustee,

with fees to date of \$38,150, and expenses incurred to date in the amount of \$950;¹

(ii) claim 426, Office of U.S. Trustee, for fees due in the amount of \$8,750.00;

(iii) Frank E. Sparr & Co., Chapter 7 Trustee's accountant, for professional fees incurred in preparing estate tax returns, in the amount of \$12,750.00; and

(iv) Clerk, U.S. Bankruptcy Court, notice fees, claim fees, adversary fees, etc., \$4,628.25;²

for a present total of \$65,198.25, meaning it is projected there will, even with allowance for the additional projected counsel fees and costs for the Special Trustee's counsel and the clerks costs, sufficient funds to pay the Chapter 7 administrative claims in full.

33. The Settlement Agreement and Mutual Release resolving, upon approval of the agreement by the Court, the pending 60(b) Motions of the I.R.S. and Department of Revenue, is attached as Ex. B, the original having been executed by all parties thereto, and a counterpart was provided to the Court.

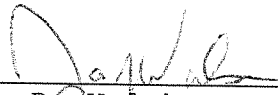
WHEREFORE the Special Trustee does pray this Court to enter an Order recommending to the District Court that (i) the settlement proposed and effected via the Courts April of 1997 Order be, to the extent that said Order approving the same was defective for lack of notice, approved, authorized and confirmed, nunc pro tunc to April of 1997, and (ii), the settlement of the claims of IRS and Revenue as provided for herein be authorized,

¹ These amount will increase as additional professional fees are incurred and expenses are incurred by counsel.

² This amount will likewise increase due to notice fees and copy charges incurred in obtaining the approval of the pending settlements.

approved and confirmed, and further, he does authorize his counsel, Spence, Custer, Saylor, Wolfe and Rose to file the instant Motion on his behalf.

Spence, Custer, Saylor, Wolfe and
Rose

By 
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JRW/Laptop/Shannopin/Amended Settlement Motion/10-19-00